IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

CRP.No. 690 of 2002(E)

RCA.172/1999 of ADDL.DISTRICT COURT, KOZHIKODE
RCP.32/1998 of ADDL.M.C.,KOZHIKODE-I
.....

REVN. PETITIONER: RESPONDENT/RESPONDENT:-

S.SHAMSUDDIN, S/O.SHAKE MUHAMMED HUSSAIN
AGED 44 YEARS, SHAKINTEVALAPPIL, S.S.COTTEGE,
NEAR VELLAYIL RAILWAY STATION, KOZHIKODE.

BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH

RESPONDENT: APPELLANT/PETITIONER:-

CHERIYA MELATTU HAFSATH, AGED 41 YEARS,
D/O. MOOSAKUTTY, POST KIZHUNNA, PUTHIYAPURA,
KANNUR DISTRICT, KANNUR-7.

BY ADV. SRI.C.KHALID

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON 19/09/2007 PASSED THE FOLLOWING:

K. Balakrishnan Nair
&
T.R. Ramachandran Nair, JJ.

**- - - -

father is conducting a textile business in S.M. Street, Kozhikode. Her brother is also conducting churidar manufacturing business at Azhiyoor. By Attending the shops of her father and brother, she has acquired sufficient experience also. The petitioner's children are also studying and two of them have joined professional courses.

3. The tenant opposed the prayer on various grounds. The bonafide need put forth by the landlady was objected on all fours. It was also pointed out that he is doing automobile workshop business in the petition schedule building and that is the only source of income for his livelihood. A further contention was also raised that there are no other suitable buildings available in the locality for shifting his business as well.

4. Learned counsel for the petitioner argued that the Rent Control Court had correctly appreciated the pleadings and evidence in the case and found that the need is not a bonafide one. The learned counsel further points out that the appellate authority has reversed the finding without any justification and the reasons stated by the appellate authority cannot be said to be correct also. It is pointed out that the landlady is a Purdah Nasin lady and it cannot be expected that she will venture into conduct of a business at Kozhikode while she is residing at Kannur and the need alleged is only a ruse for evicting the tenant. It is further argued that the husband of the

landlady is employed elsewhere in the Sales Tax Department and she alone is there in the family to look after her children and that in such contingency, it cannot be expected that she will devote herself to the business rather than keeping the household affairs under her control.

5. The need alleged is for starting a churidar business of her own. Therefore, the only question is whether the same could be said to be genuine in the facts and circumstances of the case. The Rent Control Court found against her mainly for the reason that the children are studying and there are nobody else to look after them in the family. The husband of the petitioner is a Sales Tax Commissioner and the Rent Control Court also was of the view that as her husband will not be in a position to concentrate and guide the children in their studies, it cannot be said that she will venture into the conduct of the business. It was also found that she may have to travel from Kannur to Kozhikode for conducting the business and she may not therefore be able to look after her children properly and being a Purdah Nasin lady, it is highly improbable that she can come from Kannur to Kozhikode daily for conduct of the business. The Rent Control Court also was of the view that in view of the salary income of the husband and the rental income available with the landlady, there are sufficient income for the family to meet their expenditure and therefore the landlady is in no need to start a churidar

manufacturing business in the schedule building. For all these reasons, it was found that bonafides are lacking in the case of the petitioner.

6. The Appellate Authority, after analysing the evidence, held that this is a case where it is clear that her father and brother are already in the business and there is nothing wrong in the landlady venturing herself to conduct a familiar business. It was also found by the Appellate Authority that the finding made by the Rent Control Court that there will not be anybody to look after the children in the family, is not correct, as there are other members of the family residing along with them and further, the landlady was only intending to travel daily for conduct of the business. It was also observed that merely because the children are studying in professional colleges, the need alleged cannot be said to be not genuine. It was also found that there was no suggestion made by the tenant even while P.W.1 was examined, whether she being a Purdah Nasin lady, she will not go out of the house to do the business. Thus, taking an over all view of the pleadings and evidence in the case, the Appellate Authority found that the need alleged can be said to be bonafide and accordingly ordered eviction.

7. Learned counsel for the petitioner contended that the approach made by the Appellate Authority is not correct. It was also submitted that the petitioner had given on rent another room which was available in the

year 1995 on (27.11.1995) and therefore, if actually she was desiring of starting a new business, that room could have been utilised at that time.

8. The need put forth by the petitioner is to start a churidar making unit. The petitioner's father and brother are already in the business. She had been assisting them earlier and thus had acquired experience in familiarising herself with the said business also. Merely because the room is at Calicut and she is residing at Kannur, it cannot be said that the need is not a bonafide one. The question has to be assessed in the light of the requirement of the landlord.

9. The facts and circumstances pleaded and proved in the case will show that the petitioner had studied upto S.S.L.C. and she wanted to occupy the building for her use by conducting the churidar making unit. Her father and brother had been examined as P.Ws.2 and 3. They are also in the same business and it is only in the fitness of things to notice that they will also be able to help her in running the business. Two of the eldest children are studying in professional colleges and the other two are studying in the 11th standard 8th standard respectively. She had also spoken about the requirement to augment income of the family, as the rent that is available is not sufficient to meet their requirements. In fact, the two elder children joined the professional courses in the year 1997 and it is thereafter she

thought of conducting the business to augment the income of the family. At any stretch of imagination it cannot be said that the desire of the landlady to augment the income of the family is not bonafide. We notice that the Rent Control Court was of the view that since the family is getting Rs.2,000/- towards rent per month as well as the salary of the husband of the petitioner, the desire cannot be said to be genuine. Actually, the question has to be examined after assessing the over all circumstances and the requirement of the family and the desire to augment the income. The approach made by the Rent Controller has been thus rightly found not correct by the Appellate Authority.

10. The other aspect that was relied upon by the Rent Controller which was found against by the Appellate Authority is that she being a Purdah Nasin lady, she will not be venturing out of her house to conduct the business. In paragraph 11 of the judgment, the Appellate Authority has clearly found that no such suggestions have been made to the landlady when she was examined as P.W.1. To P.W.2, the father also, no such suggestion was made. Apart from that, from the evidence of P.W.2, it was clear that another daughter is doing business in Ernakulam along with her husband on partnership basis. The evidence of P.W.3 also will show that the license for conducting the churidar making unit is in the name of his wife. Therefore,

the Appellate Authority rightly found that merely because the petitioner is a Purdah Nasin lady, it will not be a bar for her to conduct the business. Apart from that, she is having the required education also in her favour. Therefore, apparently, the view taken by the Rent Controller was found not correct by the Appellate Authority. Even though learned counsel for the petitioner vehemently argued that the view taken by the Appellate Authority is perverse, we find that the view taken by the Appellate Authority is well founded.

11. As far as the requirement of the landlord for own occupation under Section 11(3) is concerned, the landlord need prove only a genuine desire and not a dire necessity. Judged in the light of the above position, we find that the landlady has clearly established her bonafides and the desire cannot be said to be a mere wish also. Merely because she is residing in Kannur and the proposed business is to be started at Kozhikode, that will not defeat her claim. It is in evidence that she is living in her joint family house and there are other members of the family who will be able to look after the children. The Appellate Authority also noticed the fact that the wife of P.W.3 is also doing business along with her husband. Even she can employ persons to assist her in the business which cannot be objected to also. Therefore, we find that the argument raised by the learned counsel for

the petitioner that the petitioner is not intending to conduct the business, is not correct.

12. The other aspect pointed out by the learned counsel for the petitioner is that a room fell vacant in the year 1995 and if actually she wanted to start the business, that could have been occupied at that time. The eviction petition was filed only in the year 1998. She had given evidence that for the purpose of getting admission to professional courses for her two elder children, much money was needed as they were admitted in payment seats and thereafter in the year 1997 she felt the need to conduct the business to augment income of the family. Further, the room became vacant in the year 1995 and the Rent Control Petition is of the year 1998. Therefore, we do not find any merit in the said argument also.

13. The Appellate Authority also found that the tenant is not entitled to the protection of the second proviso to Section 11(3) of the Act. It was found that the tenant has not proved that there are no other suitable buildings available in the locality to shift his business and that the landlady has succeeded in proving that there are vacant space available in the locality. Therefore, there is nothing to interfere with the above finding also.

14. For all these reasons, we dismiss the C.R.P. confirming the order of eviction. Learned counsel for the petitioner sought for sufficient time to

the tenant to vacate the premises and we heard learned counsel for the respondent also on this aspect. We are inclined to grant six months' time for the tenant to vacate the premises on condition that the petitioner will file an affidavit unconditionally undertaking to vacate the premises within six months from today. The affidavit shall be filed within three weeks from today before the execution court. Any arrears of rent shall also be paid within the said period. The tenant shall also undertake to continue to pay the monthly rent till the premises are vacated. No costs.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/

K. Balakrishnan Nair
&
T.R. Ramachandran Nair, JJ.
- -
C.R.P.NO.690 of 2002
- -

O R D E R

day of September, 2007